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THE CHEMICAL AND BIOLOGICAL WEAPONS CONTROL
ACT OF 1989

OCTOBER 17 (legislative day, SEPTEMBER 13), 1989.—Ordered to be printed.

Mr. PELL, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany S. 195]

The Committee on Foreign Relations to which was referred the bill (S. 195) "Chemical and Biological Weapons Control Act of 1989" having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill (as amended) do pass.

PURPOSE

The purpose of the bill is to mandate U.S. sanctions and to encourage international sanctions against countries that use chemical and biological weapons in violation of international law or use lethal chemical or biological weapons against their own nationals; to require Presidential reports on efforts that threaten U.S. interests or regional stability by Iran, Iraq, Syria, Libya, and others to acquire the materials and technology to develop, produce, stockpile, and deliver chemical and biological weapons; to urge cooperation with other supplier nations to devise effective controls on the transfer of materials, equipment, and technology applicable to chemical or biological weapons production; to promote agreements banning the transfer of missiles suitable for armament with chemical or biological warheads; to encourage an early agreement banning the development, production, and stockpiling of chemical weapons capability.

BACKGROUND

In 1925, at the Geneva Conference for the Supervision of the International Traffic in Arms, the United States proposed a prohibition on the export of gases for use in war, and the French pro-

posed a ban on the use of poisonous gas. At Poland's suggestion, the prohibition was extended to bacteriological weapons. The conference produced what became known as the Geneva Protocol was the result. It bans the use in war of chemical and biological weapons, but not the production or stockpiling of such weapons. The Committee on Foreign Relations favorably reported the treaty in 1926, but the Senate did not act on it in that period.

In 1969, President Nixon announced that he would resubmit the protocol in the Senate. He reaffirmed U.S. renunciation of first use of lethal chemical weapons, as well as incapacitating chemicals. The President also renounced biological methods of warfare. In 1970, the President resubmitted the protocol with a reservation that the United States could retaliate with chemical weapons. He also declared that the protocol would not apply to the use in war of riot control agents and herbicides. The Committee on Foreign Relations disagreed with the narrow coverage and deferred action. In 1974, the Ford administration reopened the issue, and the Director of the Arms Control and Disarmament Agency said that the President, while reaffirming the scope of the protocol was prepared, "to renounce as a matter of national policy: (1) first use of herbicides in war except use, under regulations applicable to their domestic use, for control of vegetation within the U.S. bases and installations or around their immediate defensive perimeters; (2) first use of riot-control agents in war except in defensive military modes to save lives . . ."

RECENT DEVELOPMENTS

In recent years, there have been a number of allegations of chemical and biological weapons use. In the mid 1960's, Egypt was charged with using chemical weapons with Soviet help in the Yemen civil war. North Vietnam was charged with using chemical weapons and toxins in Laos and Cambodia. The Ethiopian Government was suspected of using chemicals against rebels in 1980. The United States charged that the Soviets used chemical weapons and toxins in Afghanistan. In the course of the Iran-Iraq war, there were repeated instances of chemical weapons use, and, last year, Iraq used chemical weapons against its Kurdish minority. Earlier this year, the Soviets repeatedly used poison gas to quell demonstrations in the Republic of Georgia.

The horror of the repeated use of these weapons by Iraq brought on renewed, worldwide attention to the chemical weapons problem. In response, the Senate and the House, but not the Congress, passed legislation imposing sanctions on Iraq.

The concern was exacerbated by reports that the ability to make chemical weapons was spreading. Libya's development of a chemical weapons capability has had widespread repercussions, especially in those nations with companies that may have assisted Libya's efforts.

In recent months, there have been a number of allegations of involvement of commercial concerns, particularly some in Western Europe in assisting nations such as Iraq and Libya in the development of chemical weapons. On February 15, following heated public controversy over the possible involvement of West German

firms in the building of the new Libyan facility, the German Government confirmed that it had received numerous warnings about the Libyan effort. At the same time, the Cabinet approved legislation for a "drastic tightening" of export controls.

Mr. Webster told the Committee in February:

"Chemical weapons proliferation is part of the disturbing trend of weapons development in Third World countries. Currently, we believe that as many as 20 countries may be developing chemical weapons. And we expect this trend to continue, despite ongoing multilateral efforts to stop their proliferation."

With regard to biological weapons, he said,

"We are concerned that the moral barrier to biological warfare has been breached. At least 10 countries are working to produce both previously known and futuristic biological weapons. Biological warfare agents—including toxins—are more potent than the most deadly chemical warfare agents, and provide the broadest area coverage per pound of payload of any weapon system."

He also told the committee:

"Finally, by the year 2000, at least 15 developing countries will be producing their own ballistic missiles. Ballistic missiles convey important new political and military status to those who acquire them. Many countries where these missiles are being developed are in the Middle East."

The obvious interest in chemical and biological weapons among nations in the developing world, the evidence of willingness of some of these nations to use such weapons and the relative ease and economy with which such weapons can be made were all factors in a developing sense of urgency that led President Mitterand to host the January 1989, Conference on the Prohibition of Chemical Weapons. A total of 149 nations were represented at the conference, and 99 foreign ministers or their representatives addressed the conference. The conference condemned the use of chemical weapons in violation of international law, stressed the continued validity of the Geneva Protocol of 1925, and expressed support for appropriate and effective actions under the United Nations charter in the event of illegal chemical weapons use, including consideration of international sanctions.

THE GENEVA NEGOTIATIONS

Negotiations have been in process toward a chemical weapons ban, which would apply essentially the same prohibition to chemical weapons as was done regarding biological weapons in the 1972 Biological Weapons Convention. The conference on disarmament, the forum for the chemical weapons ban negotiation, will resume discussions in early 1990.

In 1984, Vice President Bush tabled a draft treaty calling for a comprehensive ban with extensive verification procedures. In the years since, substantial progress has been made on a number of key issues, and there is agreement in principle on the basic approach a ban would take.

Beyond the basic ban, all chemical weapons production facilities and stockpiles would be declared and then destroyed within 10

years. There would be international onsite inspection teams within 6 months of entry into force. Relevant chemical industries would be monitored, and challenge inspections would be provided for.

President Bush said last fall, "If I'm elected President, if I'm remembered for anything, it would be this: A complete and total ban on chemical weapons." More specifically, he urged creation of a "suppliers group" to control the spread of chemical weapons and technologies.

U.S. AND SOVIET PROGRAMS

In 1969, President Nixon put a moratorium on the further U.S. production of chemical weapons. In doing so, he said, "Mankind already carries in its own hands too many of the seeds of its own destruction." The United States did not again produce chemical weapons until 1987, when production of binary nerve gas artillery shells began at Pine Bluff Arsenal in Arkansas. A new chemical-carrying bomb, the Bigeye, and a new rocket shell are under development. Unlike the earlier unitary shells, binary munitions contain lethal or incapacitating agents only after two relatively harmless agents are combined when the weapon is armed. Thus, binaries are not dangerous in peacetime situation, and the risk posed by leakage or other problems are not particularly significant, unlike the case with the existing arsenal.

The Soviet Union did not admit until 1987 that it possessed chemical weapons. At the same time, it indicated that it was ceasing chemical weapons production. More recently it announced that it will begin eliminating stocks. In 1987, the Soviets gave outsiders an unprecedented tour of Shikhany chemical warfare facility. The munitions on display appeared to be of older vintages, but included rockets, warheads for missiles, bombs, airborne spray tanks, and even chemical handgrenades.

Estimates of the total tonnage of Soviet range as high as perhaps 750,000 tons. The Soviets claim to have 50,000 tons of chemical agents—which would represent an inventory about 50 percent greater than is estimated for the United States.

COMMITTEE ACTION

S. 195 was introduced by Senator Pell for himself and 18 original cosponsors on January 25, 1989, and referred to the Committee on Foreign Relations. Subsequently, the committee held three hearings and one briefing on S. 195, S. 238, introduced by Senator Helms and three cosponsors on January 25, 1989, and on other chemical issues.

On January 24, 1989, the committee held a hearing in open session with Maj. Gen. William F. Burns, Director, U.S. Arms Control and Disarmament Agency. On March 1, 1989, the committee held a hearing in open session with the Honorable William H. Webster, Director of Central Intelligence, and a closed briefing with intelligence community analysts. On May 9, 1989, the committee held a third open session with Dr. Matthew S. Meselson, Professor of Biochemistry, Harvard University, Cambridge, MA; Dr. James F. Leonard, former Assistant Director, International Relations Bureau, Arms Control and Disarmament Agency; Dr. Will D. Car-

penter, Chairman of the Chemical Manufacturers Association Work Group on Chemical Weapons and Vice President, Technology, Monsanto Agricultural Co., St. Louis, MO; and Dr. Stephen D. Bryen, President, Delta-Tech, Arlington, VA.

The committee marked up S. 195 on Friday, October 6, 1989. Under consideration was an amendment in the nature of a substitute proposed by Senator Pell and Senator Helms, which incorporated S. 195 with revisions, as well as provisions providing for sanctions against companies which aid and abet nations seeking chemical weapons. Senator Murkowski proposed an amendment which deleted patent suspensions as one of the three sanctions to be imposed against countries involved in the illicit transport of chemical equipment, supplies, and technology to certain countries. After considering the implications for the United States of suspension of patent rights, the committee approved, by voice vote, the Murkowski amendment deleting the patent sanctions provisions. The committee then voted unanimously, with a quorum present, to order S. 195 reported with an amendment in the nature of a substitute.

COMMITTEE COMMENTS

In recognition of the nature and extent of the threat posed by the proliferation of chemical and biological weapons, the committee bill takes a two-tiered approach to halt the use of and prevent the spread of chemical and biological weapons.

First, the committee bill requires the President to impose sanctions against countries that use chemical or biological weapons in violation of international law, or use lethal chemical weapons against their own nationals. Second, the committee bill provides for sanctions to be imposed against foreign companies that aid or abet countries in the pursuit of a chemical or biological weapons capability.

SANCTIONS AGAINST USE

The use of chemical weapons in violation of international law, and the use of lethal chemical or biological weapons against a nation's own citizens is morally repugnant and indefensible. Accordingly, the committee concludes that a number of significant sanctions against use should be specified in law. These sanctions would provide a strong deterrent to use and make it abundantly clear that the United States is unalterably opposed to the illegal use of chemical and biological weapons.

Iraq's heinous use of lethal agents against its own citizens and its earlier use of chemical agents in the Iran-Iraq war was met by no formal penalties from the United States or other nations or international organizations, despite the expressed wishes of both Houses of Congress that sanctions be imposed. It is imperative that barriers to use be erected now lest the clear message remain that chemical warfare can be used with the acquiescence of the family of nations.

William Webster, Director of the Central Intelligence Agency confirmed the value of sanctions when he told the committee that sanctions "bring home the official position of the country with respect to the production and use of chemical warfare, and that pro-

vides an opportunity for sustained moral suasion, putting the spotlight on these activities."

The committee concludes that as vital as they may be unilateral sanctions cannot substitute for multilateral penalties. Accordingly, it is approving sanctions as a strong first step that should lead, with administration support, to multilateral barriers to use. The committee concurs with Dr. James Leonard, former Assistant Director of the Arms Control and Disarmament Agency, that "unilateral action . . . is highly desirable and timely. But it will not do the job unless it is accompanied or followed by action involving virtually all members of the community of nations."

The committee bill therefore encourages full U.S. support for United Nations sanctions in accordance with Security Council Resolution 620, adopted August 26, 1988. The committee bill also highlights the need to continue and expand multilateral efforts—such as the Australia Group—in order to devise effective means to monitor and control the supply of chemical and biological weapons technology and delivery capability.

The committee recognizes that clear and unambiguous evidence of chemical or biological weapons use is not available in every instance. As Mr. Webster told the committee, "you can develop sanctions, but the proof of the sanctions will depend on some form of evidence, and some of the intelligence that we have is not readily converted into evidence." This view was reinforced by the statement of Dr. Matthew S. Meselson of Harvard University that "there must be a reliable and credible basis for invoking [sanctions]. . . . Even determining whether or not chemical and biological weapons have been used can be difficult and controversial in certain circumstances, as experience has shown."

The committee was mindful of the importance of ensuring that a Presidential determination of use would be made when the facts warranted, but also wanted to ensure that no bureaucracy would be able succeed in pressing a President to make an erroneous or capricious determination. Accordingly, the committee bill spells out the standards to be met in determining use. Moreover, the committee recognizes that the executive branch and the Congress may not be in agreement over the possibility of chemical or biological weapons use. The committee bill thus provides the Congress, through the chairmen of the Senate Foreign Relations Committee and the House Foreign Affairs Committee, in consultation with the respective ranking minority members, with the means to initiate the process for a Presidential determination on such use.

In order to ensure the availability of information on dangerous activities and potential problems, the committee bill provides for annual Presidential reports on efforts by countries to develop, produce, stockpile, and deliver chemical and biological weapons. The reports shall detail the extent to which such countries were aided or abetted by foreign governments, suppliers, or companies. The committee intends to protect U.S. intelligence sources for such information and allows for the provision of information on a classified basis.

SANCTIONS TO PREVENT PRODUCTION

The proliferation of chemical and biological weapons among developing countries poses a serious threat to the national security interests of the United States. This is especially true in the Middle East, where Libya, Iran, Iraq, and Syria reportedly have obtained or are rushing to obtain a chemical weapons capability.

The United States has a high stake in the race—aided and abetted by Western industrial firms—among countries such as Iran, Iraq, Libya, and Syria to obtain chemical and biological weapons capability. Chemical weapons such as mustard gas, nerve gases, and phosgene are relatively easy to produce, hence their nickname, “the poor man’s nuclear bomb.” However, developing countries often need the assistance of Western industrial firms to obtain the capability to produce chemical weapons.

The committee bill reinforces existing authorities for the President to control the export of chemical and biological weapons technologies. In addition, the committee bill creates a new authority under the Export Administration Act, whereby the President can require a validated license for the export of any good or technology that he deems would assist a country in the development, production, stockpiling, or delivery of chemical or biological weapons.

The committee believes that export controls are a useful deterrent to the further spread of chemical and biological weapons, but that such controls in and of themselves are only partially effective in that they do not cover foreign firms.

— The committee shares the view of the administration that foreign suppliers—which operate outside the purview of domestic export controls—have contributed significantly to the proliferation of chemical and biological weapons among developing nations, particularly in the Middle East. In his testimony before the committee, Mr. Webster reported that:

“... assistance provided by foreign suppliers, many of whom were fully witting of the intentions of the Middle East countries to produce chemical weapons, has been the key element that has enabled these nations to develop a capability to produce chemical weapons within only a few years.”

The discovery of Western firm involvement in the chemical programs of Iran, Iraq, Syria, and Libya and the failure of foreign government officials to halt this involvement makes it clear that the United States cannot rely solely on the assurances of foreign governments if we to be serious about stopping trade in chemical and biological weapons.

Rather, the United States must itself take actions against the companies involved to stem trade in these weapons of mass destruction. Title II of this act provides for such action by informing the American people of, and placing sanctions upon, those companies which aid, assist, or abet the chemical or biological warfare programs of countries that have used chemical weapons in violation of international law or have been involved in state-supported terrorism.

If invoked, the sanctions would prohibit the procurement by the U.S. Government of any goods or services produced by the offending party, and would bar the import of such goods and services into

the United States. Appropriate exceptions are available to the President in cases where the producer is the sole-source supplier of military goods and services deemed essential to U.S. security interests.

The host government of the offending company may have taken appropriate steps, including penalties, to terminate the involvement of the company in the activities covered by the committee bill. If, in consultation with the host government, the President makes such a determination, the committee bill gives him the authority not to impose sanctions.

United States policy on the use and proliferation of chemical and biological weapons should be clearly stated and consistently applied. United States sanctions against the use and production of chemical and biological weapons are widely accepted as an effective policy instrument by the administration, the Congress, and the private industrial sector. This broad coalition of support was evident throughout the course of the committee's hearings and consideration of S. 195, where all of the witnesses expressed support for the idea of U.S. sanctions against use and production of chemical and biological weapons.

CONCLUSION

The sanctions in this bill create a clear and serious deterrent against countries that would use chemical weapons, and the companies that would help them along the way. But more is needed above and beyond these sanctions.

As Dr. Meselson stated before the committee: "a system of sanctions against the acquisition, possession, and use of chemical and biological weapons will be maximally effective when it is joined to a global chemical weapons convention with strong provisions for international verification." In the committee's view, the sanctions encompassed by S. 195 are the appropriate means for dealing with this urgent problem at this time, and they will provide a useful complement to the President's drive to achieve a global, verifiable ban on chemical weapons.

The committee shares the view of the administration that the goal of a complete and verifiable ban on chemical weapons is desirable. As Dr. Meselson testified:

"A chemical weapons convention would send a powerful signal to the governments and peoples of the world, reinforcing the already widespread abhorrence of chemical weapons. It would create tough international verification procedures to deter violations and to provide more reliable and internationally credible information regarding both well-founded suspicions and erroneous allegations. A chemical weapons convention would eliminate large stocks of Soviet chemical weapons that threaten Europe, when the value of U.S. chemical weapons is severely limited by the strong reluctance of our NATO allies to integrate them into military planning and by the pervasiveness of modern antichemical defenses developed by the Soviets. Finally, a chemical weapons convention would provide a uniform political and legal basis for sanctions against noncompliance, the subjects of the bills before [the committee]."

The challenge posed by the proliferation of chemical and biological weapons among radical regimes in the Middle East is grave. If America's vital interests in the Middle East and elsewhere in the world are to be preserved, it will take concerted action on the part of Congress to inhibit the trade of chemical and biological weapons and provide the President with a wide range of instruments, including appropriate sanctions, to work toward and encourage the attainment of the goal of a global chemical weapons ban.

SECTION-BY-SECTION ANALYSIS

Section 1. This section gives the short title of the act, the "Chemical and Biological Weapons Control Act of 1989."

Section 2. This section cites 10 findings of the Congress—

- (1) chemical weapons were used in the Iran-Iraq war and by Iraq against its own citizens;
- (2) the use of such weapons is abhorrent and requires immediate and effective sanctions;
- (3) the United Nations Security Council has stated its intent to consider immediately "appropriate and effective" sanctions against use;
- (4) most countries have joined in reoffering support for the 1925 Geneva Protocol and in seeking a ban on the production and possession of chemical weapons;
- (5) as many as 20 countries are seeking chemical weapons;
- (6) as many as 10 countries are working to produce biological weapons;
- (7) by 2000, at least 15 developing nations may be able to produce ballistic missiles capable of carrying chemical or biological warheads;
- (8) the spread of these weapons would pose a threat of incalculable proportions to friends and allies and undermine national security;
- (9) the United Nations should create an effective means of monitoring and reporting regularly on commerce applicable to the attainment of a chemical or biological weapons capability;
- (10) every effort should be made to achieve a chemical weapons ban.

Section 3. This section sets forth the purpose of the act:

- (1) to mandate United States sanctions and to encourage international sanctions against countries that use chemical or biological weapons in violation of international law or use lethal chemical or biological weapons against their own nationals;
- (2) to require Presidential reports on efforts that threaten United States interests or regional stability by Iran, Iraq, Syria, Libya, and others to acquire the materials and technology to develop, produce, stockpile, and deliver chemical and biological weapons;
- (3) to urge cooperation with other supplier nations to devise effective controls on the transfer of materials, equipment, and technology applicable to chemical or biological weapons production;
- (4) to promote agreements banning the transfer of missiles suitable for armament with chemical or biological warheads;
- (5) to encourage an early agreement banning the development, production, and stockpiling of chemical weapons; and

(6) to seek effective international means of monitoring and reporting regularly on commerce in equipment, materials, and technology applicable to the attainment of a chemical or biological weapons capability.

TITLE I—SANCTIONS AGAINST THE USE OF CHEMICAL AND BIOLOGICAL WEAPONS

Section 101. This section establishes procedures to be followed in the event of illegal weapons use. Two procedures are set up to be used when appropriate. Under the first, whenever information becomes available indicating the "substantial possibility" that a foreign country has used chemical or biological weapons, the President is obligated to make a determination regarding such use. The standard of a "substantial possibility" is used to avoid placing the burden on the President of conducting an investigation under circumstances in which the information at that point lacks the detail, credibility, or corroboration warranting Presidential investigation. In such circumstances, the executive branch should use all diplomatic and intelligence means available, as well as other sources, to ascertain the facts of the situation.

The second procedure is designed for use when Members of the Congress perceive an ambiguous situation requiring clarification or believe that the apparent facts warrant a Presidential determination. In such instances, the chairmen of the Senate Foreign Relations Committee and the House Foreign Affairs Committee may, upon consultation with the ranking minority member of their committee, request a Presidential determination regarding possible use. The President shall make a determination whether use has or has not occurred and report to the chairmen within 60 days.

To ensure that the Presidential determination is not based on prejudgments by any faction of the bureaucracy, but, rather is thorough, balanced, and painstaking, the section spells out the matters to be considered.

Subsection (b) set forth the sanctions to be applied in the event the President determines that a nation has used chemical or biological weapons illegally or used lethal chemical or biological weapons against its own citizens. The sanctions are as follows:

- (1) terminate assistance to that country under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance, or for the purpose of purchasing food or other agricultural products;
- (2) terminate all foreign military sales financing under the Arms Export Control Act with respect to that country;
- (3) terminate U.S. Government sales to that country of any defense articles or defense services;
- (4) prohibit the issuance of any licenses for the export to that country of any item on the United States Munitions List;
- (5) prohibit, under the authorities of Section 6 of the Export Administration Act of 1979, the export to that country of any goods or technology on the control list established pursuant to section 5(c)(1) of that act;
- (6) oppose, in accordance with Section 701 of the International Financial Institutions Act, the extension of any loan or financial or

technical assistance to that country by international financial institutions;

(7) prohibit the import of any good, commodity, or service from that country;

(8) deny that country any credit or credit guarantees through the Export-Import Bank of the United States;

(9) prohibit, under the authorities of the International Emergency Economic Powers Act, any U.S. bank from making any loan or providing any credit to that country, except for loans or credits for the purpose of purchasing food or other agricultural products; and

(10) terminate, consistent with international law, the landing rights in the United States of any airline owned by the government of that country at the earliest practicable date.

Section 102. This section specifies that the President may waive the applicability of some or all of the sanctions for a period not to exceed 9 months from the date of his determination if he determines that such a waiver is in the national interest and so certifies to the Congress with a detailed explanation. The purpose of this waiver is to allow the President to temporarily withhold the application of sanctions in situations in which such action is clearly warranted. The period of up to 9 months would serve to give the executive branch time to make arrangements to deal with problems which might arise for the United States if particular sanctions were imposed immediately. An example would be the continued import of a commodity vital to our national security interests, for which an alternate source must be found. In addition, this period of waiver would allow the President to work with the Congress in gaining any changes in law necessary if the imposition of particular sanctions is clearly inappropriate. To allow a full waiver without time limit would seriously undermine the deterrent value of these provisions and give comfort to those who might press for the use of chemical or biological weapons and argue that the United States would do nothing.

Section 103. This section requires that the President notify the Congress within 5 days of imposing or waiving any sanction.

Section 104. This section would permit performance of those contracts not involving foreign or military aid or military arms sales entered into prior to a Presidential determination of use unless the performance of such contract or agreement would have the effect of assisting the sanctioned country in further use. Sanctions shall apply to contracts and agreements for covered economic and military and for arms sales regardless of the date they were entered into, except that sanctions shall not apply to such contracts and agreements entered into prior to the Presidential determination of use if the President determines that the application of such sanction would be detrimental to U.S. national security interests.

Section 105. This section provides that the President may remove sanctions if he determines and certifies to the Congress that the sanctioned country (1) has renounced that illegal use of chemical and biological weapons and the use of lethal chemical or biological weapons and has provided reliable assurances to that effect and (2) has provided satisfactory restitution to those affected by the use which brought on the sanctions. The requirement for reliable assurances will help ensure that the pledge has substance and mean-

ing. Since it is difficult to set a general standard for satisfactory restitution, the decision is left to the President as to what is satisfactory. Nonetheless, it is clear that restitution should be substantial, since token recompense would only compound the abhorrent nature of the situation.

Section 106. This section provides for a Presidential report to the Congress 90 days after enactment and annually thereafter on efforts by countries or subnational groups that threaten our security interests or regional stability to acquire the wherewithal for chemical and biological weapons, together with an assessment of present and future capabilities. The report will also describe the degree to which any country or foreign person has aided or abetted any nation or subnational group in the acquisition of any chemical or biological weapons.

Section 107. This section urges the President to cooperate closely with the Australia Group in efforts to monitor and control the flow of dangerous chemicals and to work with others to devise the most effective controls possible on transfers of relevant equipment, materials, and technology, to seek agreements preventing the transfer of ballistic missiles that could carry chemical and biological weapons, and to take the initiative in seeking early agreement on a chemical weapons ban.

TITLE II—MEASURES TO PREVENT THE PROLIFERATION OF CHEMICAL AND BIOLOGICAL WEAPONS

Section 201. This section provides that it is the policy of the United States to seek multilateral and coordinated efforts to control chemical and biological weapons proliferation.

Section 202(a). This subsection requires the President to use authorities under the Arms Export and Control Act and the Export Administration Act of 1979 to control the export of defense articles, defense services, goods, and technologies that would assist foreign countries in developing chemical or biological weapons programs.

Section 202(b). This subsection amends Section 6 of the Export Administration Act of 1979 to require a license for the export to any country with which the United States has not entered into an agreement for the control of chemical or biological weapons goods or technology of any goods or technology which the President determines would assist a foreign country in developing a chemical or biological weapons program.

Section 203(a). This subsection requires the President, subject to the conditions in this section, to impose sanctions provided for in this section upon any foreign person (including such entities as corporation, financial institution, insurer partnership, freight forwarder, or other businesses) which he determines has knowingly and substantially aided or abetted the chemical or biological weapons program of any country which, since January 1, 1980, has used, or has made substantial preparations to use, chemical or biological weapons in violation of international law or against its own citizens, or has been designated as a country which supports international terrorism pursuant to Section 6(j) of the Export Administration Act of 1979.

The President may avoid imposing sanctions under this section if he has consulted with the appropriate foreign government, and has determined and so certified to Congress that the government has taken actions to effectively terminate a foreign entity's involvement in the chemical or biological weapons.

In the event the President determines that a foreign entity should be subject to sanctions under this section, within 30 days of the determination, he must report to Congress on any consultations with the appropriate government and on the actions taken by that government in the event he decides to avoid imposing sanctions.

Section 203(b). This subsection provides that any foreign entity subject to sanctions under this section would be restricted from selling any goods or services to the U.S. Government and would be restricted from importing any of its products into the United States.

Section 203(c). This subsection provides that any sanctions imposed under this section would be terminated after 2 years if the President determines and certifies to Congress that the individual or corporation subject to sanctions has ceased aiding or abetting the chemical or biological weapons trade.

Section 203(d). This subsection provides the President with the authority not to apply sanctions which would prevent the U.S. Government from procuring defense articles or services under existing contracts, or from a company which is the sole source supplier of essential defense articles or services for which there is no readily available alternative source, or which he determines are essential to national security under defense coproduction agreements.

The President is also authorized to avoid imposing sanctions on products or services provided under contracts entered into before the President makes public his intent to impose sanctions, or upon spare parts, component parts essential to U.S. production, or routine servicing and maintenance of products for which there is no readily or reasonably available alternative source.

The President is also authorized to avoid imposing sanctions on information and technology not directly useful to chemical or biological weapons programs or on medical or other humanitarian items.

Section 204. This section defines "foreign person" as a non-U.S. individual, partnership, or corporation, including the parent or subsidiary of the corporation.

The section also defines "defense article" to include any weapon, weapons system, munitions, aircraft, vessel, boat, or other implement of war, any property, installation, commodity, material, equipment, supply, or goods used for making military sales, or any machinery, facility, tool, material, supply, or other item needed in the production or use of any of the aforementioned items.

The section also defines "defense service" to include any service, test, inspection, repair, training, publication, technical, or other assistance or defense information used for the purposes of making military sales.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In accordance with rule XXVI 11(a) of the Standing Rules of the Senate, the committee provides the following estimates of the cost of S. 195, prepared by the Congressional Budget Office.



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20518

Robert D. Reischauer
Director

October 16, 1989

Honorable Claiborne Pell
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 195, the Chemical and Biological Weapons Control Act of 1989, as ordered reported by the Senate Committee on Foreign Relations on October 6, 1989. Title I of the bill mandates sanctions against any country found to have used, subsequent to enactment of the bill, chemical or biological weapons either in violation of international law or against its own nationals. The sanctions include a termination of foreign assistance to the country, and also the imposition of an import embargo on goods from that country. Title II of the bill would require the President to determine which goods and technologies exported by U.S. firms could be used in acquiring chemical or biological weapons. Upon this determination, a validated license would be required for the export of any such good or technology.

Title I of the bill is not expected to have a significant budgetary effect on the federal government. If a country is found to have used chemical weapons and sanctions are imposed, the foreign assistance that would be terminated probably would be reprogrammed for use in another country. If imports from that country are embargoed, customs duties would not be collected on those imports. However, if the embargoed imports are replaced by imports from another country, there would be no net loss of customs duties, and therefore no impact on revenues.

Under Title II, implementation of the provision requiring a license for the export of any good or technology used in chemical or biological weapons could result in additional costs to the federal government. The President would have to determine which goods and technologies would require export licenses, and therefore the types of exports that would require a license are uncertain. As a result, CBO cannot estimate the cost of this provision with confidence. We expect that the federal government could incur additional costs of up to several million dollars annually if the number of exports determined to require a license is large. On the other hand, the costs incurred would probably not be significant if the number of exports determined to require a license is small. Other provisions of Title II are expected to have no significant budgetary effect on the federal government.

Enactment of the bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details. Your staff may contact Kent Christensen at 226-2840 or Caroline Ratcliffe at 226-2720 for answers to any questions you may have.

Sincerely,

Robert D. Reischauer
Director

cc: Honorable Jesse Helms
Ranking Minority Member

EVALUATION OF REGULATORY IMPACT

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the committee has concluded that there is no regulatory impact from S. 195.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EXPORT ADMINISTRATION ACT

* * * * *
SECTION 1. * * *

* * * * *
SECTION 6. * * *
(a) * * *

* * * * *
(q) *CHEMICAL AND BIOLOGICAL WEAPONS. A validated license shall be required under this section for the export of any goods or technology that the President determines would assist a country in acquiring the capability to develop, produce, stockpile, deliver, or use chemical or biological weapons, unless the destination of such export is a country with whose government the United States has entered into bilateral or multilateral arrangements for the control of chemical or biological weapons related goods or technology.*

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